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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TRP ENTERTAINMENT, LLC,

Plaintiff,

v.

BC ENTERTAINMENT, INC., *et al.*,

Defendants.

BC ENTERTAINMENT, INC., *et al.*,

Counterclaimants,

v.

TRP ENTERTAINMENT, LLC,

Counterdefendant.

Case No. 2:08-cv-00579-LDG

ORDER

Plaintiff/Counterdefendant TRP Entertainment, LLC, moves for an award of attorneys’ fees in the amount of \$99,087.77 (ECF No. 118). As the Court does not find this to be an exceptional case, the Court will deny the motion. 15 U.S.C.A. §1117(a) (“[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party”).

1 Early in this litigation, TRP Entertainment was the losing party on a motion for partial
2 summary judgment on the counterclaim that the term “The Rat Pack” is generic in the
3 context of live shows about or in tribute to members of the Rat Pack.

4 Subsequently, no proceedings took place in this matter for more than a year, and
5 the Court notified TRP Entertainment that the matter would be dismissed for want of
6 prosecution if no action was taken within 30 days. TRP Entertainment did not take any
7 action within the 30 days, and the Court dismissed the matter for want of prosecution.

8 The Defendant/Counterclaimant moved the Court to reconsider dismissal of the
9 action on the basis that a proposed partial judgment had been submitted on behalf of the
10 Counterclaimant, but that the Court had not signed and entered the partial judgment. TRP
11 Entertainment opposed the motion to re-open this matter. The Court granted Defendant/
12 Counterclaimant’s motion, re-opened the matter, and entered a partial judgment in favor of
13 the Counterclaimant.

14 Subsequently, no proceedings took place in this matter for more than a year. The
15 Court again notified TRP Entertainment that the matter would be dismissed for want of
16 prosecution if no action was taken within 30 days. TRP Entertainment responded by
17 moving to stay this matter, which motion the Court denied. TRP Entertainment moved to
18 dismiss this matter because Defendant/Counterclaimant had not participated in preparing a
19 Joint Pre-trial order. The Court denied that motion. The matter was scheduled for a
20 settlement conference. While TRP Entertainment prepared for and attended that
21 conference, Defendant/Counterclaimant did not. Ultimately, the Magistrate Judge
22 recommended that the Defendant’s answer to TRP Entertainment’s complaint be stricken,
23 and that a default judgment be entered. The Court adopted that recommendation.

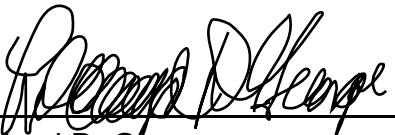
24 TRP Entertainment then appealed this Court’s Partial Judgment in favor of
25 Counterclaimant. The Ninth Circuit rejected the appeal and affirmed this Court’s decision.
26 As a result, the Director of the United States Patent and Trademark Office was ordered to

1 enter a disclaimer on TRP Entertainment's Trademark Registration No. 2,640,066 that "NO
2 CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE 'THE RAT PACK' APART FROM
3 THE MARK AS SHOWN." The Court holds that, under these circumstances, this is not an
4 exceptional case warranting an award of attorneys' fees.

5 Accordingly, for good cause shown,

6 THE COURT **ORDERS** that TRP Entertainment, LLC's Motion for Attorney's Fees
7 (ECF No. 118) is DENIED.

8
9 DATED this 17 day of October, 2017.



Lloyd D. George
United States District Judge